

TOWTRUCK ORDINANCE NO. 2005- 009

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 19, ARTICLE VIII (ORDINANCE NO. 2002-7), PROVIDING FOR THE REGULATION OF THE MAXIMUM RATES FOR NON-CONSENT TOWING AND STORING OF MOTOR VEHICLES; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR TOW TRUCK CLASS SPECIFICATIONS; PROVIDING FOR TOWING OPERATING PERMIT; PROVIDING FOR APPLICATION FOR TOWING OPERATING PERMITS AND FEES; PROVIDING FOR ISSUANCE OF OPERATING PERMITS AND RENEWALS; PROVIDING FOR INSURANCE REQUIREMENTS, PROVIDING FOR TOWTRUCK REGISTRATION, STANDARDS AND DECALS; PROVIDING FOR INSPECTION PROCEDURES AND REQUIREMENTS; PROVIDING FOR MANIFEST, TOWING INVOICE OR TOW SHEET; PROVIDING FOR ADVERTISEMENTS; PROVIDING FOR RECORDS REQUIREMENTS; PROVIDING FOR TOWING OPERATING PERMIT REQUIRED TO DO BUSINESS WITH THE COUNTY; PROVIDING FOR TOWING WITH PRIOR EXPRESS INSTRUCTION OF REAL PROPERTY OWNER OR AUTHORIZED AGENT AND/OR LAW ENFORCEMENT AGENCY; PROVIDING FOR NOTICE REQUIREMENTS FOR PROVIDING TOW SERVICES AT REQUEST OF REAL PROPERTY OWNERS; PROVIDING FOR TOWTRUCK COMPANY REQUIREMENTS; PROVIDING FOR MAXIMUM TOWING AND STORAGES RATES FOR NON-CONSENT TOW SERVICES; PROVIDING FOR FRAUDULENT TRANSFER OF TOWTRUCK COMPANIES; PROVIDING FOR DECEPTIVE AND UNFAIR TRADE PRACTICES, PROVIDING FOR CEASE AND DESIST ORDERS, PROVIDING FOR ASSURANCES OF VOLUNTARY COMPLIANCE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ADMINISTRATIVE ENFORCEMENT; PROVIDING FOR ADDITIONAL PENALTIES; PROVIDING FOR HEARINGS AND APPEALS; PROVIDING FOR SCOPE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, numerous persons and firms in Palm Beach County engage in the business of recovering, towing and storing of motor vehicles and vessels; and

WHEREAS, such towing services frequently must be provided without the prior consent of the vehicle/vessel owner, or under circumstances which prevent negotiating the charges, terms and conditions for the towing service, often resulting in disagreements and complaints between vehicle/vessel owners and providers of towing services; and

Palm Beach County
TOWING ORDINANCE
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WHEREAS, the vehicles and equipment used to tow vehicles/vessels across the thoroughfares of Palm Beach County and the manner in which towing is conducted are of considerable significance to the health, safety and welfare of the owners of towed vehicles/vessels and of the residents and visitors in Palm Beach County; and

WHEREAS, Sections 125.0103(b), 166.043(c) and 715.07(2), Florida Statutes, empowers the Board of County Commissioners to enact regulations pertaining to the towing industry, including the authority to regulate maximum rates when vehicles are towed or removed from private property; and

WHEREAS, the Ordinance is amended to clarify the licensing procedures and to expand the enforcement authority; and

WHEREAS, the United States Supreme Court decision in *Ours Garage vs. City of Columbus*, 536 U.S. 424 (2002) held that states could delegate their authority to regulate non-consent towing services as it relates to price and safety; and

WHEREAS, pursuant to Section 125.0103(b), Florida Statutes, counties have been delegated the authority to regulate towing; and

WHEREAS, the Board of County Commissioners of Palm Beach County finds it to be in the best interest of the County, its citizens and its visitors to license and regulate the price and safety of non-consent towing services within Palm Beach County, to assure that all who provide the services are fit and competent to do so and that such services are delivered in a safe and efficient manner; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby amends Palm Beach County Code Chapter 19, Article VIII, (Ordinance No. 2002-17).

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. Title.

This Ordinance shall be known and cited as the Towtruck Ordinance of Palm Beach County, Florida.

SECTION 2. Definitions.

For the purposes of this Ordinance, the following definitions shall apply:

1. Administrative/Lien Fee shall mean the fee that is charged for title and lien search, advertising costs, and notification of lien holder and owner of the whereabouts and charges against a vehicle or vessel.
2. Advertisement shall mean any written statement made in connection with the solicitation of a towtruck company and includes without limitation, statements and representations made in a newspaper, telephone directory or other publication, radio, television, electronic medium or contained in any notice, handbill, business card, sign, catalog, billboard, brochure, poster or letter.
3. Applicant shall mean any person who applies for a operating permit or with Palm Beach County. In the case of partnerships, associations, corporations and other legal entities, "applicant" shall also mean any member of a partnership and the corporate officers and directors.
4. Commission shall mean the Board of County Commissioners of Palm Beach County, Florida.
5. Director shall mean the Division Director, or his or her designee.
6. Division shall mean the Consumer Affairs Division designated to implement, enforce and monitor this Ordinance.
7. Extra Time at Scene shall mean any extra time beyond one-half hour, needed to safely remove a vehicle or vessel and shall also include the amount of time spent at a scene when a towtruck has been summoned and is on scene but unable to proceed through no fault of the towtruck operator. All extra time shall be documented by the towtruck driver and shall include the name of the

law enforcement agency, law enforcement agency case number, officer's name and badge number. The documentation shall also include a detailed explanation of the services rendered which necessitated the charges. Extra time shall be charged in 15-minute increments.

8. For Compensation shall mean for money, property, service or anything else of value.
9. Gross weight shall mean the weight of a towtruck in pounds plus the weight of the vehicle(s)/vessel(s) and contents being towed.
10. Light Reflective Sign shall mean an 18 inch wide by 24 inch high sign made of aluminum (at least .040 thickness) or fiber reinforced plastic (at least .090 thickness). The entire background surface and all lettering must at a minimum be Type 1 Engineered Grade Sheeting (ASTM D4956-01). The letters may be screen printed on the Type 1 sheeting using a compatible transparent ink so that the retroreflection is maintained and visible.
11. Mechanical Connection shall mean any type of physical connection between a vehicle or vessel to be towed and the towtruck/flatbed truck/car carrier and includes the use of devices for maneuvering unattended vehicles/vessels unable to be safely moved by conventional winching or towing equipment.
12. Non-consent Tow shall mean the recovery, towing, removal and storage of a vehicle or vessel without authorization of the vehicle/vessel owner or authorized driver and shall include both "Police Directed Tows" and "Private Property Impounds" as defined herein.
13. Operate shall mean providing the services of recovering, towing, or removing vehicles or vessels and any vehicle/vessel storage services associated therewith.
14. Operating Permit shall mean the authority required by the provisions of this Ordinance of any individual or towing company engaging in the business of non-consent tows.
15. Operator shall mean any person who provides the services of recovering, towing, or removing vehicles and any vehicle storage services associated therewith and includes without distinction the owning entity of a towing firm

and the driver of a tow truck.

16. Person shall mean any natural person, firm, partnership, association, corporation or other entity of any kind whatsoever.
17. Place of business shall mean the towtruck company that provides non-consent towing, removal, recovery and storage services.
18. Police Directed Tow shall mean the removal and storage of a wrecked or disabled vehicles at the direction of police/law enforcement from an accident scene or the removal and storage of a vehicles in the event the vehicle owner or authorized driver is incapacitated, unavailable, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of "Private Property Impounds" as herein defined below.
19. Prior Express Instruction shall mean a clear, definite and explicit request: a) made by a police agency to recover, tow, remove, or store a specific and individual vehicle or vessel which is disabled, abandoned, or parked without authorization or whose vehicle/vessel owner or authorized driver is unable or unwilling to remove the vehicle; or b) made in writing by a real property owner or duly authorized agent of the real property owner, as specifically referenced on the written contract between the real property owner and towtruck company, to recover, tow, remove and store a specific and individual vehicle or vessel parked without permission of the real property owner. The towtruck company, an employee or agent thereof shall not be the designated agent of the real property owner for the purpose of providing prior express instruction to recover, tow, remove or store the vehicle or vessel.
20. Private Property Impound shall mean towing or removal of a vehicle or vessel, without the consent of the vehicle/vessel's owner or authorized driver when that vehicle/vessel is parked on real property, as authorized by Section 715.07, Florida Statutes, as may be amended.
21. Real Property Owner shall mean that person who exercises dominion and control over real property, including but not limited to, the legal titleholder, lessee, designated representative of a condominium or homeowner's association or any person authorized to exercise or share dominion and control

over real property; provided, however, that "real property owner" shall not mean or include a person providing towing services within the purview of this Ordinance.

22. Recover shall mean to take possession of a vehicle or vessel and its contents and to exercise control, supervision and responsibility over it.
23. Recovery shall mean the removal of a vehicle or vessel from a canal or other body of water, a wooded area not readily accessible to a roadway (i.e., within a standard cable length) or when a vehicle is buried.
24. Remove shall mean to change the location of a vehicle by towing it.
25. Revoke shall mean to annul and make void the operating permit of a towtruck company engaged in providing towing services.
26. Storage shall mean to place and leave a towed vehicle or vessel at a location where the person providing the towing services exercises control, supervision and the responsibility over the vehicle.
27. Storage facility shall mean the location where towed vehicles or vessels are stored.
28. Tow shall mean to haul, draw or pull along a vehicle or vessel by means of a towtruck equipped with booms, car carriers, winches or similar commercially manufactured equipment.
29. Towing shall mean the act of moving one vehicle or vessel from one point to another (including hook-up, lift, and transport) using what is commonly referred to as a tow truck or a car carrier.
30. Towtruck shall mean any vehicle used to tow, haul, carry or to attempt to tow, haul or carry a vehicle or vessel.
31. Towtruck Company shall mean any person, company, corporation, or other entity, which engages in, owns or operates a business which provides non-consent towing, recovery, removal and storage of vehicles or vessels for compensation.
32. Towtruck Decal shall mean a decal placed upon any towtruck granted approval to provide non-consent towing services by the Division.
33. Towtruck Driver shall mean the individual who is driving or physically

operating a towtruck for a towtruck company engaged in non-consent tows.

34. Unfair or deceptive trade acts or practices shall mean unfair methods of competition, unconscionable acts or practices and unfair deceptive acts or practices in the conduct of any consumer transaction and shall include but are not limited to the following:
- a. Representations that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;
 - b. Representations that a person or towtruck company has a sponsorship, approval, status, affiliation or connection which he or she does not have;
 - c. Representations that goods are original or new if in fact they are not, or if they are deteriorated, altered, reconditioned, reclaimed, or second-hand;
 - d. Representations that goods are of a particular standard, brand, quality, style, or model, if they are of another;
 - e. Representations that goods or services are those of another, if they are not;
 - f. Using deceptive representations or designations of geographic origin in connection with goods or services;
 - g. Advertising goods or services intending not to sell them as advertised;
 - h. Advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement discloses a limitation of quantity;
 - i. Making false or misleading statements concerning the need for, or necessity of, any goods, services, replacements, or repairs;
 - j. Disparaging the goods, services, or business of another by false or misleading representations of fact;
 - k. Making false or misleading statements of fact concerning the reasons for the existence of, or amounts of price reductions;
 - l. Failing to return or refund deposits or advance payments for goods not

delivered or services not rendered, when no default or further obligation of persons making such deposits or advance payments exists;

- m. Taking consideration for goods or services intending not to deliver such goods or perform such services, or intending to deliver goods or provide service materially different from those contracted for, ordered or sold;
- n. Offering gifts, prizes, free items, or other gratuities, intending not to provide them as offered in connection with a sale of goods or services to a consumer;
- o. Making false or misleading statements concerning the existence, terms, or probability of any rebate, additional goods or services, commission, or discount offered as an inducement for the sale of goods or services;
- p. Using physical force, threat of physical force, or coercion in dealing with consumers;
- q. Any violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501.201 et seq., Florida Statutes.

35. Vehicle shall mean an automobile, truck, bus, trailer, motorcycle, moped, motorized scooters, recreational unit primarily designed as temporary living quarters which either has its own motive power or is mounted on or drawn by another vehicle, or any other mobile item using wheels and being operated on the roads of Palm Beach County, which is used to transport persons or property and is propelled by power other than muscular power; provided, however, that the term does not include bicycles, traction engines, road rollers, semitrailers, truck tractors, semitrailer combinations, commercial heavy equipment or vehicles which run only upon a track.

36. Vessel shall mean every description of watercraft, barge and air boat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s.327.02, Florida Statutes.

SECTION 3. TOWTRUCK CLASS SPECIFICATIONS.

All towing vehicles must meet the following requirements and be commercially manufactured and meet all federal transportation and towtruck requirements.

A. Class A Ratings

Towtruck

1. Minimum gross weight14,500 lbs.
2. Minimum boom capacity16,000 lbs.
3. Minimum winching capacity8,000 lbs
4. Minimum cable size and length3/8"X100'
5. Minimum wheel lift retracted rating5,000 lbs.
6. Minimum wheel lift extended rating.....4,000 lbs.
7. Minimum tow sling safe lift.....3,500 lbs.
8. Minimum safety chains (2 each)5/16" grade 70
9. Minimum cab to axle dimension60"

Car Carrier

1. Minimum gross weight15,000 lbs.
2. Minimum deck capacity.....10,000 lbs.
3. Minimum length.....19'
4. Minimum winching capacity8,000 lbs.
5. Minimum cable size and length3/8"X50'
6. Minimum tie down chains (4 each)5/16" grade 80
7. Tie down straps (optional) (4 each) ... 2,000 lbs. each wheel
8. Minimum cab to axle dimension120"

Light Duty – Non-Police Towing

1. Minimum gross weight10,000 lbs.
2. Minimum weight of towtruck4,000 lbs.
3. Minimum wheel lift extended rating.....2,500 lbs
4. Minimum cab to axel dimension 60"

B. Class B Ratings (Medium Duty)

Towtruck

1. Minimum gross weight19,000 lbs.
2. Minimum boom capacity24,000 lbs.
3. Minimum winching capacity dual 12,000
4. Minimum cable size and length 7/16" x 150'
5. Minimum wheel lift retracted rating10,500 lbs.
6. Minimum wheel lift extended rating.....6,500 lbs.
7. Minimum tow sling safe lift.....3,500 lbs.
8. Minimum safety chains (2 each)3/8" grade 80
9. Minimum cab to axle dimension 96"
10. Required State DOT Registration

Car Carrier

1. Minimum gross weight22,500 lbs.
2. Minimum deck capacity.....10,000 lbs.
3. Minimum wheel lift capacity for 2nd vehicle4,000 lbs.
4. Minimum length.....19'
5. Minimum winching capacity8,000 lbs.
6. Minimum cable size and length3/8"X50'
7. Minimum tie down chains (4 each)5/16" grade 80
8. Tie down straps (optional) (4 each) ... 2,000 lbs. Each wheel
9. Minimum cab to axle dimension120"
10. Required State DOT Registration

C. Class C Towtruck - Ratings (Heavy Duty)

1. Minimum gross weight33,000 lbs.
Air brakes, all tires H rated, capacity must
equal axle rating. Device required to control
disabled vehicle's brakes.
2. Minimum boom capacity50,000 lbs.
3. Minimum winching capacity50,000 lbs.
4. Minimum cable size and length 5/8"X150'
5. Minimum wheel lift retracted rating40,000 lbs.
6. Minimum wheel lift extended rating.....12,000 lbs.
7. Minimum tow Bar.....10,000 lbs.
8. Minimum safety chains (2 each) 1/2" grade 80
9. Minimum cab to axle dimension156"
10. Required State DOT Registration

D. Class D. Towtruck - Ratings (Ultra Heavy Duty)

1. Minimum gross weight58,000 lbs.
Air brakes, all tires H rated, capacity must
equal axle rating. Device required to control
disabled vehicle's brakes. Tandem axles required.
2. Minimum boom capacity.100,000 lbs.
3. Minimum winching capacity.100,000 lbs.
4. Minimum cable size and length 3/4"X250'
5. Minimum wheel Lift retracted rating40,000 lbs.
6. Minimum wheel lift extended rating..... 15,000
7. Minimum heavy-duty towbar rating10,000 lbs.
8. Minimum safety chains (2 each) 1/2" grade 80
9. Minimum cab to axle dimension 18'
10. Required State DOT Registration

SECTION 4. Towing Operating Permit Required.

It shall be unlawful for any person to recover, tow, remove or store a vehicle/vessel in Palm Beach County or to cause or permit any other person to recover, tow, remove or store a vehicle/vessel in Palm Beach County or to advertise said services without first obtaining and maintaining a current and valid towing operating permit pursuant to the provisions of this Ordinance, providing, however, that a property owner requesting a "private property impound" may cause or permit the removal of a vehicle from his property in accordance with the provisions of this Ordinance. A person conducting non-consent tows in Palm Beach County but having his/her primary place of business outside of Palm Beach County shall be required to obtain a Towing Operating Permit and shall be subject to all the provisions of this Ordinance.

SECTION 5. Application for Towing Operating Permit: Fees.

- A. Every application for a towing operating permit shall be in writing, signed and verified by the applicant, and filed with the Division together with the required

fees established by resolution of the Commission. The fees shall be deposited in a separate County fund for the Division's operation.

- B. Every application for a towing operating permit shall be on a form prescribed by the Division and shall contain information, including but not limited to:
1. Sufficient information to identify the applicant, including but not limited to, full legal name, date of birth, telephone numbers, the place of business and residence addresses, a copy of the applicant's Palm Beach County Occupational License and driver's license number. If the applicant is a corporation, the foregoing information shall be provided for each corporate officer, director, registered agent and shareholder. If the applicant is a partnership, the foregoing information shall be provided for each general and limited partner. Post office box addresses shall not be accepted.
 2. Documentation demonstrating that all corporate or partnership applicants are qualified to do business under the laws of Florida.
 3. A list of all persons with any ownership interest in the company who have previously been denied an operating permit from this or any other jurisdiction.
 4. Verification of the business' current corporate status and Fictitious Name Registration (if applicable) with the State of Florida.
 5. Any trade name under which the business operates, intends to operate, or has previously operated.
 6. The location and physical addresses of all places of business including storage facilities.
 7. A description of services proposed to be provided, including, but not limited to, days and hours of operation and types of towing and storage services to be provided.
 8. A record of any felony within the last 10 years to which the applicant, not previously licensed with the Division, was convicted of, found guilty of, or pled guilty or nolo contendere to, regardless of the adjudication of guilt.

9. A record of the following crimes of which the applicant, not previously licensed with the Division, has been convicted of, found guilty of, or pled guilty or nolo contendere to, regardless of the adjudication of guilt, within the last 10 years involving: repossession of a motor vehicle under Chapter 493, F.S., repair of a motor vehicle under ss. 559.901-559.9221, F.S., theft of a motor vehicle under s. 812.014, F.S., carjacking under s. 812.133, F.S., operation of a chop shop under s. 812.16, F.S., failure to maintain records of motor vehicle parts and accessories under s. 860.14, F.S., airbag theft or use of fake airbags under s. 860.145 or s. 860.146, overcharging for repairs and parts under 860.15, F.S., or violation of the towing or storage requirements for a motor vehicle under s. 321.051, F.S., Chapter 323, F.S., s. 713.78, F.S., s. 715.07, F.S., or this Ordinance. In the case of a corporate or partnership applicant, all corporate officers and directors, or partners shall provide all such information, as the case may be.
10. A record of any unsatisfied civil fines or penalties arising out of an administrative or enforcement action brought by the Division, another governmental agency, or a private person based upon conduct involving a violation of this Ordinance or other towing regulations.
11. A record of any pending criminal, administrative, or enforcement proceeding in any jurisdiction based upon conduct involving a violation of this Ordinance or other towing regulations.
12. A record of any judgment entered in an action brought by the Division under this Ordinance.
13. Proof of insurance as required in Section 7 of this Ordinance.
14. A notarized signature of each individual applicant, president or vice-president of a corporation and of all the general and limited partners of a partnership having 25 percent or greater ownership in the company.
15. The submission of a statement assuring that each towtruck is commercially manufactured, meets the specifications listed herein, is in safe operating condition and receives routine service/maintenance.

16. An agreement on the part of the applicant to abide by the provisions of this Ordinance and the laws of the State of Florida.
17. Such additional information as the Division may deem appropriate.
18. All towtruck companies which desire to operate in Palm Beach County must secure an operating permit and follow the permitting procedures described in this section prior to conducting business. If there are six months or less remaining before the annual renewal period, the fee for the operating permit shall be fifty (50) percent of the approved fee, otherwise all other fees are applicable.
19. Each towing operating permit and towtruck decal issued pursuant to this section shall be valid and effective for one (1) year, terminating on December 31 of each year. Failure to submit a towing operating permit application and the required fee for renewal by September 30 of each year will result in the assessment of a non-refundable late fee. The late fee shall be established by a resolution of the Commission.

Upon submission of an application, the Division may provide the towtruck company with a receipt which shall constitute a provisional towtruck operating permit and shall be valid for no longer than forty-five (45) calendar days or until the issuance or denial of the towtruck operating permit, whichever comes first.

Towtruck companies failing to submit a complete and true application within thirty (30) calendar days after the Division's receipt of the application shall be denied a towtruck operating permit. Within ten (10) business days of receipt of the Division's notice of denial, such towtruck companies may refile a complete and true application and pay a non-refundable re-filing fee established by a resolution of the Commission. Failure to refile an application within this ten (10) day period will result in the towtruck company being required to submit a new application and repaying the non-refundable permit fee and

towtruck decal fees.

SECTION 6. Issuance of Operating Permits; Renewal.

- A. The Division shall issue operating permits to towtruck companies which have met the standards and requirements for an operating permit, and shall promulgate administrative procedures for the application for and issuance of such operating permits and for the renewal, denial, revocation and suspension of such operating permits.
- B. The Division shall review and investigate each application for an operating permit and shall reject any application that is incomplete or untrue in whole or in part, or which fails in any way to meet the requirements of subsection C. of this section.
- C. No operating permit shall be issued or renewed unless the applicant has:
 - 1. Filed with the Division a true, correct and complete application on the form prescribed by the Division, including all proofs of required insurance.
 - 2. Paid the required fee; and
 - 3. Submitted to a background investigation resulting in a determination by the Division that:
 - a. The applicant neither possesses a suspended or revoked driver's license, nor has had its operating permit previously revoked by action of the Division or any other jurisdiction within two (2) years of the date of application, or has outstanding and unsatisfied civil penalties imposed due to violations of this Ordinance as it has or may be amended.
 - b. For a new applicant not previously licensed with the Division, the applicant has a felony record within the last 10 years to which the applicant was convicted of, found guilty of, or pled guilty or nolo contendere to, regardless of the adjudication of guilt.

- c. For a new applicant not previously licensed with the Division, the applicant has, within the last 10 years, been convicted of, found guilty of, or pled guilty or nolo contendere to, regardless of the adjudication of guilt: repossession of a motor vehicle under Chapter 493, repair of a motor vehicle under ss. 559.901-559.9221, F.S., theft of a motor vehicle under s. 812.014, F.S., carjacking under s. 812.133, F.S., operation of a chop shop under s. 812.16, F.S., motor vehicle parts and accessories under s. 860.14, F. S., airbags under s. 860.145, F.S., or s. 860.146, F.S., overcharging for repairs and parts under 860.15, F.S., or the towing or storage of a motor vehicle under s. 321.051, F.S., Chapter 323, F.S., s. 713.78, F.S., or s. 715.07, F.S. In the case of a corporate or partnership applicant, all corporate officers and directors, or partners shall provide all such information, as the case may be.
- d. The applicant has a record of any unsatisfied civil fines or penalties arising out of an administrative or enforcement action brought by the Division, another governmental agency, or a private person based upon conduct involving a violation of this Ordinance or other towing regulations.
- e. The applicant has a record of any criminal, administrative, or enforcement proceeding in any jurisdiction based upon conduct involving a violation of this Ordinance or other towing regulations.
- f. The applicant has failed to abide by any Cease and Desist Order issued by the Division.
- g. The applicant has a record of any judgment entered in an action brought by the Division under this Ordinance.
- h. In the case of b. through f. delineated above, such person must have completed all terms or sentences of incarceration, required rehabilitation activities, and/or payment of all fines

and penalties imposed including restitution.

- i. Each corporate or partnership applicant must be qualified under the laws of Florida to do business under the trade name or names under which it has applied for an operating permit.
 - j. No fraud or willful or knowing misrepresentation or false statement was made in the application.
 - k. No judgment against the applicant arising out of the activity of recovery, towing or removing a vehicle/vessel or providing storage in connection therewith remains unsatisfied, unless a stay or reversal of the judgment is procured through the courts.
- D. After initial application and upon renewal, the applicant shall submit to a background investigation every other year.
- E. Any applicant who fails to furnish to the Division a true and complete application, including all of the requested supporting documentation, within 30 days of the filing of the application shall be denied an operating permit. Such applicant may refile for the operating permit only one additional time by again paying the full and complete operating permit application and towtruck decal fees and immediately furnishing the requested information or documentation to complete the application. The failure to refile and pay the appropriate fees and/or to provide the requested information within the time specified herein will result in the denial of the operating permit application for that licensing period.
- F. Each towing operating permit shall be on a form printed with the requirements described herein and shall be signed by the Director. Each towing operating permit shall contain, at a minimum, the name and address of the applicant, the dates the operating permit remains in effect, and a statement of such additional terms and conditions, restrictions and limitations as were authorized in the application and approval process.
- G. All towing operating permits shall be renewed annually. As a part of the renewal process, the original application shall be updated and verified by the applicant. Each updated renewal application shall be submitted at least sixty

(60) days prior to expiration of the current operating permit and shall be accompanied by a fee, which shall be established by resolution of the Commission. All monies received shall be deposited in a separate Palm Beach County fund and shall be used exclusively to accomplish the purposes of this Ordinance. All towing operating permits which are not renewed shall automatically expire upon the expiration date of the operating permit, as stated on the operating permit, and all recovery, towing, removing and storage services permitted thereunder shall cease immediately. The Division shall deny each renewal application that is not timely, is incomplete, is untrue in whole or in part, is unaccompanied by the required fee, or results in a determination by the Division that the applicant has failed to satisfy the requirements of subsection C (3) of this section. Any applicant who fails to furnish to the Division a true and complete renewal application, including all of the requested supporting documentation, within 30 days of the filing of the renewal application shall be denied an operating permit.

- H. An operating permit issued or renewed pursuant to the provisions of this section shall not be transferable, nor shall the ownership structure of the operating permit be so modified as to constitute a change in the control or ownership of the operating permit, without the prior written approval of the Division. The towing operating permit issued by the Division shall remain the property of Palm Beach County and shall be used only under the authority of the Division.
- I. The applicant who files his renewal application after the filing deadline date established by the Division shall pay a renewal late fee as established by the Commission by resolution.
- J. There shall be no numerical limit on operating permits issued pursuant to the provisions of this Section.
- K. Failure to comply with the provisions of this Section may result in denial of an operating permit, revocation or suspension of the operating permit, a denial of renewal of such operating permit, issuance of a civil citation, a criminal conviction and/or other such remedies available to the Division herein.

- L. All monies required pursuant to this Section shall be non-refundable.
- M. Prior to the issuance of an operating permit, the Division shall inspect each non-consent towtruck storage facility to assure compliance with this Ordinance and the following:
1. Adequate chain-link or solid-wall fencing that has a minimum height of 6 feet with lockable and secure gates surrounding the storage facility. (713.78(7)(b)1), F.S.
 2. At least 10 feet by 20 feet of outdoor storage space for each standard vehicle/vessel (more for larger vehicles). The facility must be able to accommodate a minimum of 10 standard size vehicles.
 3. At least 10 feet by 20 feet of indoor storage space for each standard vehicle/vessel. The indoor storage space must adequately protect the vehicle from natural (i.e., rain, hail, etc.) and man-made (i.e., paint, chemicals, etc.) elements, be isolated to prevent contact with unapproved personnel/public and be placed in such a manner to prevent damage by any other means. Indoor storage space shall be adequately vented to the outside to prevent accumulation of toxic fumes or gases that may pose a threat to human health. The indoor facility must be able to accommodate a minimum of at least one standard size vehicle. This subsection shall not apply to towtruck operators performing private property impounds exclusively. In lieu of indoor storage, such private property impound only operators shall insure that towed vehicles are adequately protected from the elements by the use of tarps, commercial plastic wraps or other means.
 4. Illuminate the storage facility with lighting of sufficient intensity to reveal persons and vehicles/vessels at a distance of 150 feet during nighttime. (713.78(7)(b)2), F.S.
 5. Each storage facility must use one or more of the following security methods to discourage theft of vehicles/vessels or of any personal property contained in such vehicles/vessels:
 - a. A night dispatcher or watchman remaining on duty at the

storage facility from sunset to sunrise;

- b. A guard dog (as licensed and approved by the Animal Care & Control Division) which remains at the storage facility from sunset to sunrise;
- c. Security cameras or other similar electronic surveillance devices which monitor the storage facility; or
- d. A licensed security guard service which examines/patrols the storage facility at least once each hour from sunset to sunrise.

(713.78(7)(b)3), F.S.

- 6. An appropriate office area protected from the weather and equipped with a wired telephone system and approved sanitary facilities in accordance with the requirements of Chapter 64E-10, FAC.

SECTION 7. Insurance Requirements.

- A. It shall be unlawful for any towtruck company receiving compensation to recover, tow, or remove a vehicle/vessel or to provide vehicle/vessel storage services in connection therewith until that company has filed with the Division and maintains in effect, for each towtruck and towtruck company, an insurance policy or policies or certificates of insurance which shall indemnify/insure such company for its liability, at a minimum, as follows:

- 1. Auto liability for each towtruck:
 - a. \$300,000 combined single limit for Class A – Light Duty (Section 3.A.) towtrucks used exclusively for private property impounds.
 - b. \$500,000 combined single limit for all other towtrucks.
- 2. General/garage liability:
 - a. \$300,000 combined single limit for towtruck operators performing only private property impounds.
 - b. \$500,000 combined single limit for all other towtruck operators.

3. Garage keeper's liability, \$50,000 for any one vehicle and \$100,000 per occurrence.
 4. \$50,000 on-hook cargo liability coverage for each vehicle.
 5. Worker's Compensation as required by state law.
- B. All insurance policies required shall be issued by insurance companies authorized and qualified to do business in the state of Florida. Such insurance companies must carry a "B+" rating or higher as determined by the A.M. Best Guide. No policy shall be accepted which is less than a six (6) month duration. Each policy shall be endorsed to provide for (30) thirty days notice by U.S. mail to the Division of any material change, cancellation or expiration of the policy.
- C. A properly completed Certificate of Insurance evidencing all insurance coverages shall be made available to the Division upon application for an operating permit. Certificates of Insurance must contain the following name and address as Certificate Holder:
- Board of County Commissioners of Palm Beach County
c/o Division of Consumer Affairs
50 South Military Trail, Suite 201
West Palm Beach, FL 33415
- Evidence of the renewal of the policy shall be filed with the Division prior to such policy's expiration date. Failure to file such evidence of insurance, or failure to have same in full force and effect, may result in denial of a permit, revocation or suspension of the permit, a denial of renewal of such permit, issuance of a civil citation, a misdemeanor conviction or other such remedies available to the Division herein.
- D. Failure to provide current certificates of insurance or policies or failure to maintain the required coverage for each towtruck/towtruck company shall result in suspension of the towing operating permit, which shall remain in effect until proof of compliance with this section is submitted to the Director and approved.
- E. Insurance requirements do not apply to governmental agencies.

SECTION 8. Towtruck Registration; Towtruck Standards; Decals.

- A. It shall be unlawful to recover, tow or remove a vehicle/vessel or to store it in connection therewith unless the towtruck used to provide such service displays in the lower left corner (driver side) of the front window a current decal issued by the Division. The towtruck decal remains the property of the Division and can be used only under the authority of the Division.
- B. The Division is authorized to issue current towtruck decals for each separate towtruck upon application by the towtruck company and completion or satisfaction of the following:
 - 1. Inspection by personnel authorized by the Division to ensure that the towtruck clearly displays the company name on the exterior of the driver and passenger sides in permanently affixed letters in contrasting colors at least three (3) inches high. The address, telephone number and operating permit number must be in at least one (1) inch permanently affixed letters in contrasting colors on the exterior driver and passenger sides.
 - 2. Submission of an affidavit to the Division assuring that each towtruck is commercially manufactured and meets the specifications listed in Section 3 of this Ordinance and is in safe operating condition.
 - 3. An application form prepared by the Division and completed by the towtruck company, which correctly indicates the year, make, model, vehicle identification number, and the State of Florida motor vehicle license plate number and the expiration date of the license plate of the towtruck. A copy of the State of Florida Vehicle Registration shall be provided for each vehicle to be registered/permitted with the Division.
 - 4. Payment of a non-refundable decal fee established by resolution of the Commission and deposited and used in the same manner as other fees and charges under this Ordinance.
 - 5. Inspection of the towtruck by personnel authorized by the Division to ensure that the towtruck meets the minimum towtruck safety and

equipment standards. The minimum safety requirements for all towtrucks shall be:

- a. Compliance with Section 3 of this Ordinance;
- b. Vehicle and towing apparatus in safe operating condition pursuant to Chapter 316, F.S;
- c. Tire conditions and tread;
- d. Braking performance;
- e. Lights – head, parking, rear, signal and flood;
- f. Amber emergency lighting;
- g. Fire extinguisher;
- h. Safety Equipment – Flares, light reflective safety cones or red triangle highway warning reflectors; and
- i. Flashlight.

Towtrucks used exclusively for Police Directed tows shall be required to also have the following:

- a. “Oil Dry” or its equivalent; and
- b. Equipment – crowbar/pryer, jumper cables, bolt cutters, 4-way lug wrench, extra tow chain, 5 gallon trash receptacle, fire axe, heavy duty push broom and shovel.

- C. It shall be unlawful for any towtruck company to alter or transfer ownership of any decal. If a towtruck is destroyed or sold, the towtruck company must remove said decal and surrender the remains to the Division.
- D. Any additional towtrucks must comply with this Section prior to being used for recovery, towing or removal of any vehicle/vessel. Upon compliance with this Section, additional towtrucks acquired during the licensing year will receive a decal at a prorated fee.
- E. Decals shall be issued in numerical order and each decal issued shall display its assigned number. Decals shall be issued annually when the operating permit is renewed.
- F. The decal for each towtruck shall be affixed by personnel authorized by the Division and shall at all times be displayed and available for inspection by any

law enforcement officer or by personnel authorized by the Division to perform enforcement duties.

- G. Replacement or duplicate decals may be authorized by the Division upon the completion of an application and notarized statement of the towtruck company stating that such replacement or duplicate decal is necessary and stating the reasons for such request, along with a nominal charge to be approved by resolution of the Commission.
- H. A towing company which has towtrucks inspected by a municipality or law enforcement agency that meet the inspection requirements of this Ordinance, shall be exempt from the inspection requirements herein as long as the inspection took place within 90 days of the required Division inspection. However, all towtrucks operating pursuant to this Ordinance shall be registered with the Division and meet the vehicle safety requirements of this Ordinance. By resolution, the Commission may assess a reduced decal fee for towtrucks inspected by a municipality or law enforcement agency.

Section 9. Inspection Procedures and Requirements.

- A. The Division shall conduct storage facility and individual towtruck inspections upon the completion and submittal of all application requirements by each towtruck company. The Division will provide written notification (fax or electronic notification acceptable) to the towtruck company of the need for inspection of storage facilities and all towtrucks.
 - 1. Within 5 business days of notification, the towtruck company shall contact the Division to schedule an appointment for inspection. Said inspection shall be completed within 20 business days after the towtruck company contacts the Division to schedule the inspection. If the towtruck company does not schedule the inspection within 5 business days of notification, then prior to inspection, an inspection late fee established by resolution of the Commission must be paid to the Division. Failure to schedule the appointment following initial

notification by the Division within the five day time period shall result in the denial of the operating permit and a requirement that the operating permit application be resubmitted along with applicable non-refundable re-filing fees established by resolution of the Commission.

2. If the towtruck company cancels the inspection, a cancellation fee must be paid to the Division prior to inspection. Failure to reschedule the appointment within 11 business days of the initial notification by the Division or to complete said inspection within 20 business days after the appointment has been rescheduled, shall result in the denial of the operating permit and a requirement that prior to inspection, the operating permit application be resubmitted along with applicable non-refundable re-filing fees established by resolution of the Commission. The applicant shall only be permitted one opportunity to reschedule the required inspections.

- B. If a storage facility inspection reveals deficiencies (fails) and a reinspection is required, then a storage facility reinspection fee must be paid to the Division. The fee is to be established by the Commission by resolution. Within 5 business days of notification, the towtruck company shall contact the Division to schedule an appointment for reinspection. Said reinspection shall be completed within 20 business days after the towtruck company contacts the Division to schedule the reinspection. Failure to complete said reinspection within 20 business days after the appointment has been scheduled, shall result in the denial of the operating permit and a requirement that the application be resubmitted along with applicable non-refundable re-filing fees established by resolution of the Commission.

- C. Upon the Division's inspection of the storage facility and towtruck(s), if all towtrucks are not available/present, then the towtruck company shall bring the unavailable truck(s) to the Division's designated inspection site within 5 business days by appointment. If the towtruck(s) are not inspected within 5 business days, then a vehicle inspection late fee must be paid to the Division. The fee is to be established by the Commission by resolution.

- D. If a towtruck inspection reveals deficiencies (fails) and a reinspection is required, then the failed truck(s) are to be brought to the Division's designated reinspection site within 5 business days by appointment. The vehicle reinspection fee shall be applied each time the individual towtruck fails the inspection process. If the towtruck is not reinspected within 5 business days, then a late vehicle reinspection fee must be paid to the Division.
- E. Towtrucks that are out of service at the time of a scheduled vehicle inspection and are expected to be out-of-service longer than 5 business days as well as towtrucks that have failed 2 inspections will be red-tagged by the Division. A red-tag "out of service" decal will be applied to the vehicle by a Division employee and the vehicle may not be used for any business or towing purposes until such time as the vehicle is brought to the Division's designated site, inspected and approved for operation. Only Division employees may remove the red-tag decal.
- F. It shall be unlawful to operate a towtruck which has failed to pass any critical item specified on any towtruck inspection performed by personnel authorized by the Division or has failed to correct other inspection deficiencies within the time period specified by the Division or is operating with safety deficiencies or without the proper insurance coverage. When a towtruck has failed to pass inspection or the owner has failed to correct such inspection deficiencies or the vehicle is operating with safety deficiencies or without the proper insurance coverage, personnel authorized by the Division shall affix to the lower left corner of the towtruck windshield a red tag "out of service" decal/notice. It shall be unlawful for the towtruck company or any other person other than personnel authorized by the Division to remove this notice from the windshield of the towtruck. This notice shall remain the property of the Division and Palm Beach County.
- G. It is a violation of this Ordinance not to have storage facilities and towtrucks inspected according to the above requirements. Failure to pay the required fees is a violation of this Ordinance.

SECTION 10. Manifest, Towing Invoice, or Tow Sheet.

- A. In the event that prior express instruction (signed and dated) of the real property owner is provided by facsimile (Section 14.D.), the towtruck driver is not required to be in possession of said prior express instruction.
- B. It shall be unlawful for any person providing nonconsent towing services to recover, tow or remove a vehicle/vessel or provide storage in connection therewith unless the person providing such service shall maintain in his possession a manifest, towing invoice, ~~or~~ tow sheet or dispatch records which shall include, but not be limited to, the following information:
1. Name of the towtruck company and of the towtruck operator physically providing the service;
 2. Palm Beach County Decal number of the towing vehicle used to provide the service;
 3. Name, address and telephone number of the person requesting the service, except as provided in Section 14.E. of this Ordinance;
 4. Prior express instruction (signed and dated) of the real property owner provided in the presence of the towtruck driver recovering, towing or removing the vehicle/vessel except as provided in paragraph A. above.
 5. Date and time the towtruck arrived at the location where the service is to be performed;
 6. Location at which the service originated;
 7. Destination to which the vehicle/vessel being provided the service is taken and the time of arrival at the destination;
 8. Description of vehicle/vessel being provided the service, including make, model, year (if known), color, vehicle/vessel identification number (if visible) and license plate number, if any;
 9. Description of services provided;
 10. The total charges listed individually and specifically as well as the description of the services rendered;
 11. When an "extra time at scene" charge is applied, the towtruck driver

shall obtain and provide the name of the law enforcement agency, case number of the agency and badge number and name of the investigating law enforcement officer on the scene. A detailed explanation of the services rendered which necessitated the charges shall also be recorded and provided to the vehicle/vessel owner or representative upon demand.

12. The following disclosure in bold capitalized letters of at least 12-point type:

IF YOU HAVE QUESTIONS OR COMPLAINTS ABOUT NON-CONSENT TOWS UNABLE TO BE RESOLVED BY THE TOWING COMPANY MANAGEMENT, CONTACT THE PALM BEACH COUNTY CONSUMER AFFAIRS DIVISION, WEST PALM BEACH, FLORIDA. TELEPHONE: (561) 712-6600 OR BY INTERNET: www.pbcgov.com/consumer.

COMPANIES PERFORMING NON-CONSENT TOWS IN PALM BEACH COUNTY ARE REQUIRED TO ACCEPT ALL OF THE FOLLOWING FORMS OF PAYMENT:

- 1. CASH, MONEY ORDER OR VALID TRAVELER'S CHECK; AND**
- 2. VALID BANK DEBIT/CREDIT CARD, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, MASTERCARD OR VISA, THAT IS IN THE NAME OF THE VEHICLE/VESSEL OWNER OR AUTHORIZED DRIVER/AGENT; AND**
- 3. VALID PERSONAL CHECK SHOWING ON ITS FACE THE NAME AND FLORIDA ADDRESS OF THE VEHICLE/VESSEL OWNER OR AUTHORIZED DRIVER/AGENT.**

- C. Each manifest, towing invoice, or tow sheet shall be available for inspection upon demand by law enforcement officers, or by personnel authorized by the Division to perform enforcement duties, at any time during the period of recovery, towing or removal of a vehicle/vessel.

SECTION 11. Advertisements.

In all advertisements, towtruck companies shall furnish the complete business address, telephone number and Palm Beach County Towing Operating Permit Number of said towtruck company. The Permit Number is not required in telephone directories where the publisher gratuitously provides a "business listing" with only the

company name, address and phone number.

SECTION 12. Records Required.

Each towtruck company shall maintain accurate and complete records relating to the rates for non-consent tows, including but not limited to, manifests, towing invoices, or tow sheets for services rendered, and records of payments for services rendered.

When photographs are taken of vehicles/vessels, the vehicle/vessel owner and the Division shall have access to such photos for the purpose of inspection and/or copying. Such records and photographs shall be maintained for at least three (3) years. The Division shall be granted access to these records for inspection and/or copying, during regular business hours, upon three (3) calendar days prior notice. In the event, the Division is denied the opportunity to inspect and copy such records; the Division shall have the right to remove the records for the purpose of copying and shall return any records removed within three (3) calendar days. All records and information inspected and not copied shall be confidential, except that records may be copied and made public for the purpose of complaint investigations, operating permit suspension and/or revocation proceedings .

Section 13. Towing Operating Permit Required to Do Business with the County.

No person shall submit a bid, nor shall any contract be awarded, on any county contract or agreement to recover, tow, or remove vehicles/vessels or provide storage in connection with such services unless that person has a valid and current towing operating permit issued pursuant to this Ordinance. Nothing herein shall prevent the County from contracting for more stringent requirements than set forth in this Ordinance.

SECTION 14. Towing With Prior Express Instruction of Real Property Owner or Authorized Agent and/or Law Enforcement Agency.

In addition to the other requirements of this Ordinance, no towtruck company shall, for compensation, recover, tow, or remove a vehicle/vessel or provide storage in

connection therewith without the prior express instruction of the vehicle/vessel owner or authorized driver, except in accordance with the following:

- A. Police Directed Tow: Towtruck companies may for compensation recover, tow or remove a vehicle/vessel based upon a police directed tow without the prior express instruction of the vehicle/vessel owner or authorized driver upon the prior express instruction of a law enforcement agency and in accordance with the terms of any contracts or agreements between the towtruck company and a governmental entity and/or law enforcement agency.
- B. Private Property Impound: Towtruck companies may for compensation recover, tow or remove a vehicle/vessel based upon a private property impound without the prior express instruction of the vehicle/vessel owner or authorized driver, upon the prior express instruction of a real property owner or his authorized agent on whose property the vehicle/vessel is disabled, abandoned or parked without authorization or whose vehicle/ vessel owner or authorized agent is unwilling or unable to remove the vehicle/vessel, provided that the requirements of this Ordinance are satisfied. The towtruck company recovering, towing or removing a vehicle/vessel shall, within thirty (30) minutes of completion of such towing or removal, notify the appropriate law enforcement agency in which jurisdiction the vehicle/vessel was parked of the nature of the service rendered, the name and address of the storage facility where the vehicle/vessel will be stored, the time the vehicle was secured to the towing vehicle, and the make, model, color and vehicle/vessel license plate number (if any). The towtruck company shall obtain the name of the person at the law enforcement agency to whom such information was reported and note that name on the trip record.
- C. Except as otherwise provided in this Ordinance, every prior express instruction made in writing or in person shall indicate the date and time of the instruction and shall be signed by the law enforcement officer, or the real property owner/duly authorized agent in the presence of the towtruck company providing the service. The law enforcement officer or the real property

owner/the duly authorized agent shall also print his/her full name.

- D. Signing in the presence of the towtruck company/driver shall not be required for a prior express instruction made by the real property owner or authorized agent forwarded by facsimile transmission on a form provided by the Division. All other requirements of this Ordinance shall apply and the real property owner or duly authorized agent shall provide in the facsimile instruction the specific location (i.e., address, parking space, etc.), color of the vehicle, make and/or model of the vehicle (if visible) and either the license tag number or the vehicle identification number (if available) prior to the vehicle/vessel being towed. Such facsimile instruction shall include the real property owner's or authorized agent's signature and printed or typed full name and title, as well as an electronic confirmation or electronic stamp of the date and time the instruction was sent to the towtruck company. The towtruck company, in compliance with Section 12 of this Ordinance, shall maintain copies of facsimile instructions.
- E. If specifically approved in the contract for service, signing in the presence of the towtruck company/driver shall not be required when a vehicle/vessel is parked and blocking public egress/ingress to the business/residential area. In such cases the towtruck company is required to photograph the car and its location prior to removal and said photograph shall conclusively shows that the vehicle is clearly in violation this sub-section. The photograph must include a date and time stamp.
- F. No towtruck company/driver shall pay or rebate money, or solicit or offer the rebate of money, or other valuable consideration in order to obtain the privilege of rendering towing services. The only exceptions are:
1. Governmental franchise fees; and
 2. Towtruck companies providing fax machines to facilitate the requirements of this section.
- G. Except as otherwise provided in this Ordinance, no such prior express instruction shall be considered to have been given: 1) by the mere posting of

signage as required by Section 15 of this Ordinance; 2) by virtue of the terms of any contract or agreement between a towtruck company and a real property owner; 3) when the prior express instruction occurs in advance of the actual unauthorized parking of the vehicle/vessel; or 4) where the prior express instruction is general in nature and unrelated to specific, individual and identifiable vehicles/vessels which are already parked without authorization.

- H. Each towtruck company shall enter into a written contract with every owner of private property that authorizes the towtruck company to tow vehicles/vessels from its property. This written contract shall include the beginning date of said contract, the names and titles of all persons (i.e., owner, property manager, condominium president, etc.) who have the authority to appoint persons (i.e., security guard, night watchman, on-site manager, etc.) who can authorize prior express instruction to the towtruck company to remove, recover or tow any vehicle/vessel from its property. The written contract shall also include the name and current telephone number of the towtruck company performing the towing service. Any addendum to the contract shall include additional names and titles as necessary. No such contract shall state that the towtruck company assumes the liability for improperly towed vehicles/vessel, contrary to s. 715.07(4), F.S. The towtruck company must keep on file each contract and addendum (if applicable) with the property owner. Such contract shall be maintained for at least 12 months after termination. The Division and law enforcement officers may inspect and request a copy of any and all such contracts from the towtruck company during normal business hours. The towtruck company may not withhold production of the contract upon demand by the Division or law enforcement. Failure to enter into or keep on file a contract with the property owner shall be a violation of this Ordinance. All contracts which were entered into prior to the effective date of this Ordinance, shall accomplish the requirements of this subsection by entering into an addendum to the current contract within one year following the enactment of this Ordinance.

- I. Towtruck companies may not enter into a written contract with the owner of private property that authorizes the towtruck company to tow vehicles/vessels from the real property owner's property to the storage yard where the mileage restrictions have been exceeded contrary to s. 715.07 (2)(a)1, F.S., as may be amended from time to time.
- J. Real property owners or authorized representatives shall not request the recovery, tow, or the removal of vehicles/vessels that are reasonably identifiable from markings or equipment as law enforcement, fire fighting, rescue squad, ambulance, or other emergency vehicles/vessels which are marked as such or to property owned by any governmental entity.
- K. Any person who improperly causes a vehicle/vessel to be recovered, towed, removed or stored shall be liable to the vehicle owner or authorized representative for the costs of the services provided, any damages resulting from the recovery, towing, removal or storage and attorney's fees and court costs.

SECTION 15. Notice Requirements for Providing Tow Services at Request of Real Property Owners.

- A. In addition to the requirements of Section 14 of this Ordinance, towtruck companies duly permitted under this Ordinance may recover, tow or remove a vehicle/vessel or provide storage in connection therewith upon the prior express instruction of a real property owner or authorized agent, on whose property the vehicle/vessel is abandoned or parked without authorization, provided that the following requirements are satisfied:
 - 1. Notice shall be prominently posted on the real property from which the vehicle/vessel is proposed to be removed and shall fulfill the following requirements:
 - a. A light reflective sign shall be prominently placed at each driveway access/entrance or curb cut allowing vehicular access to the real property, within five (5) feet from the public right-of-way line. If there are no curbs or access barriers, signs shall

be posted not less than one (1) sign each twenty-five (25) feet of lot frontage. The sign shall be permanently installed not less than three (3) feet and not more than six (6) feet above ground level and shall be continuously maintained on the real property for not less than twenty-four (24) hours prior to the towing or removal of any vehicle/vessel(s).

- b. The light reflective sign shall clearly display in not less than 2-inch high letters on a contrasting background, the words: "UNAUTHORIZED VEHICLES/VESSELS WILL BE TOWED AWAY AT THE OWNER'S EXPENSE." The words "TOW-AWAY ZONE" must be included on the light reflective sign in not less than 4-inch high letters on a contrasting background;
- c. The light reflective sign shall clearly indicate, in not less than 2-inch high letters on a contrasting background, the days of the week, and hours of the day during which vehicles/vessels will be towed away at the owner's expense; and the name and current telephone number of the towtruck company performing the towing service.

2. Light reflective signs must be maintained or replaced so that they are clearly visible, legible and light reflective at all times. The towing company is responsible for maintaining and replacing signs. In the event the towtruck company goes out of business or is no longer performing tow services for the real property owner, the real property owner is responsible for removal of signs. Failing to provide, maintain, replace and/or remove the signs in accordance with this section is a violation of this Ordinance.

3. Startup: All new private property towing contracts must comply with the light reflective sign requirements beginning 3 months after the effective date of this Ordinance. All other "Tow Away" signs for previously existing contracts must comply with these requirements, as

signs are replaced, but no later than 5 years after enactment of this Ordinance.

4. The posting of notice requirements of this section shall not be required where:

- a. The real property on which a vehicle/vessel is parked is property appurtenant to and obviously part of a single-family type residence; or
- b. Written notice is personally given to the vehicle/vessel owner or authorized driver/agent that the real property on which the vehicle/vessel is or will be parked is reserved or otherwise not available for unauthorized vehicles/vessels and is subject to being removed at the vehicle/vessel owner's expense.

B. Except as otherwise provided in Section 14, D. and E., when any real property owner instructs a vehicle/vessel to be recovered, towed, removed from his or her property and stored, s/he or a designated representative shall sign the tow ticket authorizing the tow. Immediately upon request, and without demanding compensation, the real property owner shall inform the vehicle/vessel owner or other authorized person in control of the vehicle/vessel of the name and address of the towtruck company that has recovered, towed or removed the vehicle/vessel.

C. If the vehicle/vessel owner or authorized driver/agent arrives at the scene prior to the vehicle/vessel being removed or towed from the property, the vehicle/vessel shall be disconnected from the towtruck and the vehicle/vessel owner or authorized driver/agent shall be allowed to remove the vehicle/vessel without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service (drop charge), for which a receipt shall be given, unless that person refuses to remove the vehicle/vessel which is unlawfully parked. The bill/invoice must be presented to the vehicle/vessel owner authorized/driver/agent prior to request for the payment. In the event the owner/driver of the vehicle/vessel is occupying the vehicle/vessel and refuses to vacate same, in addition to the drop charge, the

towtruck company/driver is permitted to charge extra time at the scene where law enforcement involvement is necessary and the towtruck driver obtains the name of the law enforcement agency, case number of the law enforcement agency and the name and badge number of the investigating law enforcement officer. The towtruck driver shall also prepare detailed documentation/ explanation as to why "extra time at scene" charges were required. All documentation shall be provided to the vehicle/vessel owner or representative upon demand. Such fee shall be approved by resolution of the Commission.

Section 16. Towtruck Company Requirements.

- A. Towtruck companies providing services pursuant to this Ordinance shall not do so when there is a person occupying the vehicle/vessel.
- B. Towtruck companies providing services pursuant to this Ordinance shall transport the vehicle/vessel directly to the storage facility of the towtruck company providing the service, or to such other location as a law enforcement officer authorizing the tow may expressly direct, and shall not keep the vehicle/vessel in any temporary holding area.
- C. Towtruck companies who provide services pursuant to this Ordinance shall file and keep on record with the Division a complete copy of all current rates charged for the recovery, towing or removal of vehicles/vessels and storage provided in connection therewith. Such persons shall also display prominently at each storage facility the following information: signage which identifies the name of the towing company, a schedule of all charges and rates for removal of vehicles/vessels for private property impounds; a statement that these rates do not exceed those rates filed with the Division and are in accordance with the provisions of this Ordinance and the rights afforded to a vehicle owner or authorized driver/agent pursuant to Florida Statutes. The above information shall be posted prominently in the area designated for the vehicle/vessel owner or authorized driver/agent to transact business. Such area shall provide shelter, safety and lighting adequate for the vehicle/vessel owner or authorized

driver/agent to read the posted rate schedule. Further, notice shall be posted advising the vehicle/vessel owner or authorized driver/agent of the right to request and review a complete schedule of charges and rates for towing services for the jurisdiction in which the law enforcement order to tow was made, and that the towtruck company is permitted by the Division noting the Division's telephone number, address and business hours.

D. Towtruck companies shall provide signage on the property clearly visible from the street, (unless otherwise prohibited by local zoning laws) with at least 3 inch letters on a contrasting background with the name and phone number of the towtruck company.

E. Towtruck companies who provide services pursuant to this Ordinance shall advise any vehicle/vessel owner or authorized driver/agent who calls by telephone prior to arriving at the storage facility of the following:

1. Each and every document or other item which must be produced to retrieve the vehicle/vessel;
2. The exact charges as of the time of the telephone call, and the rate at which charges accumulate after the call;
3. The acceptable methods of payment; and
4. The hours and days the storage facility is open for regular business.

F. Towtruck companies who provide services pursuant to this Ordinance shall allow every vehicle/vessel owner or authorized driver/agent to inspect the interior and exterior of the towed vehicle upon his or her arrival at the storage facility before payment of any charges (except for "Late-Hour Gate or Personal Property Retrieval Fee"). With the exception of vehicles being held pursuant to the specific request or "hold order" of a law enforcement agency, the vehicle/vessel owner or authorized driver/agent shall be permitted to remove the vehicle license tag and any and all personal property inside but not affixed to the vehicle/vessel.

G. Towtruck companies who provide services pursuant to this Ordinance shall

accept payment for charges from the vehicle/vessel owner or authorized driver/agent in all the following forms:

1. Cash, money order or valid traveler's check; and
2. Valid bank debit/credit card, which shall include, but not be limited to, MasterCard or VISA, that is in the name of the vehicle/vessel owner or authorized driver/agent; and
3. Valid personal check showing on its face the name and Florida address of the vehicle/vessel owner or authorized driver/agent.

A towtruck company/driver shall not reject any of the above forms of payment. A vehicle/vessel owner or authorized driver/agent shall not be required to furnish more than one government issued (1) form of picture identification when payment is made by valid bank debit/credit card or personal check, and said presentation shall constitute sufficient identity verification.

- H. Towtruck companies who provide services pursuant to this Ordinance shall not store or impound a towed vehicle/vessel at a distance which exceeds a ten (10) mile radius of the location from which the vehicle/vessel was recovered, towed or removed unless no towing company providing services under this section is located within a ten (10) mile radius, in which case a towed or removed vehicle/vessel must be stored at a site within twenty (20) miles of the point of removal.
- I. Towtruck companies who provide services pursuant to this Ordinance shall maintain one or more storage facilities, each of which shall maintain a current Palm Beach County Occupational License and municipal occupational or business license (when applicable) and shall be open for the purpose of redemption of vehicles/vessels by owners or authorized drivers/agents on any day that the towtruck company is open for towing purposes from at least 8:00 A.M. to 6:00 P.M., Monday through Friday and, when closed, shall have posted prominently on the exterior of the storage facility and place of business, if different, a notice indicating a telephone number where the

towtruck company can be reached at all times. Upon request of the vehicle/vessel owner or authorized driver/agent, the towtruck company shall release the vehicle/vessel to the vehicle/vessel owner or authorized driver/agent within one (1) hour.

- J. Towtruck companies shall not, as a condition of release of the vehicle/vessel, require a vehicle/vessel owner or authorized driver/agent to sign any release or waiver of any kind which would release the towtruck company from liability for damages noted by the vehicle/vessel owner or authorized driver/agent at the time of the vehicle's/vessel's release. A detailed, signed receipt showing the legal name of the towtruck company removing the vehicle/vessel shall be given to the vehicle/vessel owner or authorized driver/agent at the time of payment, whether requested or not.
- K. Nothing in this Ordinance shall prevent the Sheriff or any municipality within the county from providing additional or more restrictive requirements in contracts or arrangements which authorize the recovery, towing or removal of vehicles/vessels or storage provided in connection therewith.

SECTION 17. Maximum Towing and Storage Rates for Non-Consent Tow Services.

- A. The Commission shall, by Resolution establish maximum rates, as may be amended from time to time, for nonconsent towing services as follows:
 - 1. Towing service per call, which shall include the first 30 minutes that the towtruck is actually on the scene engaged in the safe removal of a vehicle/vessel.
 - 2. Mileage (per towed mile) according to Section 715.07, Florida Statutes.
 - 3. Storage may be charged only after the vehicle has been in the storage facility for at least 6 hours. If the vehicle was not recovered by the vehicle/vessel owner or authorized driver/agent after the 6-hour time period has elapsed, then storage charges shall accrue in 24-hour increments from the time the vehicle/vessel arrived in the storage

facility and:

- a. The police agency has authorized the vehicle/vessel to be impounded, or
 - b. The appropriate police agency has been notified by the towtruck company that the towtruck company is in possession of a vehicle/vessel as a result of a private property impound.
4. Indoor storage rates may only be charged upon the express direction and written authorization of the owner/authorized driver/agent, lien holder, insurance company representative or investigating police agency. The only exceptions to this rule are:
 - a. When the condition of the vehicle requires indoor storage due to inclement weather conditions or the vehicle's window(s) and/or convertible top is down and cannot be raised and indoor storage is necessary to protect the vehicle and its contents, or
 - b. When a municipal or county jurisdiction require indoor storage for towed vehicles.
5. An Administrative/Lien Fee shall only be charged after the vehicle/vessel has been in the storage facility for at least 24 hours and:
 - a. The police agency has authorized the vehicle/vessel to be impounded, or
 - b. The police agency has been notified by the towtruck company that the towtruck company is in possession of a vehicle/vessel as a result of a private property impound.
6. The towtruck company must show proof that lien letter(s) have been prepared with the appropriate names/addresses (i.e., U.S. Mail Certification Number, correspondence copies, etc.).
7. Underwater recovery performed by a certified/professional diver with the written documentation and approval of the investigating law enforcement agency/officer.
8. Hazardous material clean-up and disposal as required, mandated and/or licensed through federal, state or local laws and approved by the

investigating law enforcement agency/officer.

9. Late-hour Gate fee may be applied between the hours of 8 p.m. and 8

a.m. when:

- a. Impounded vehicles/vessels are recovered by the owner or authorized driver/agent; or
- b. The owner or authorized driver/agent wishes to recover property from an impounded vehicle/vessel.

B. The rates established shall be uniform throughout Palm Beach County both in the incorporated and unincorporated areas, except where municipalities have established differing maximum rates for their jurisdictions. From time to time, the rates established by the Commission may be revised in accordance with a rate study.

C. Persons who provide services pursuant to this section shall not charge in excess of the maximum allowable rates established by the Commission. No person providing services pursuant to this section shall charge any type of fee other than the rates for which the Commission has specifically established. Towtruck companies which tow vehicles/vessels from Palm Beach County into another county shall abide by the terms of this Ordinance including all rates and charges adopted by the Commission.

D. Towtruck companies which provide services pursuant to this section shall display on the same sign as the rate schedule required by this Ordinance the following statement:

To The Vehicle/Vessel Owner

If you believe that you have been overcharged for the services rendered, you do not have to pay your bill to get your vehicle/vessel. Instead, you have the right to post a bond in the Circuit Court, payable to (name of Towtruck Company), in the amount of the final bill for services rendered, and to file a complaint within ten (10) days of the time you have knowledge of the location of the vehicle/vessel. The Court will decide later who is correct. If you show (name of Towtruck Company) a valid Clerk's certificate showing you have posted a bond, (name of Towtruck Company) must release your vehicle/vessel to you immediately. This remedy is in addition to other legal remedies you may have. Section 713.76 and Section 713.78, Florida Statutes.

If you have a complaint about the way services were provided, you may call the Palm Beach County Consumer Affairs Division, (561) 712-6600.

- E. Each towtruck company shall maintain, on a form approved by the Division, a rate sheet specifying all rates and charges, which shall be given by the towtruck driver to the requesting vehicle/vessel owner or his authorized driver/agent prior to commencing the service.

Section 18. Fraudulent Transfer of Towtruck Company.

A transfer of a towtruck company to a successor company shall be deemed a fraudulent transfer if said transfer is made by the towtruck company for the purpose of evading permit fees or civil penalties issued pursuant to this Ordinance. In determining intent to defraud, consideration may be given among other factors to, whether:

- A. The transfer was to an insider;
- B. The towtruck company retained possession or control of the property transferred after the transfer;
- C. The transfer was disclosed or concealed;
- D. Before the transfer was made or obligation was incurred, the towtruck company had been sued or threatened with suit;
- E. The transfer was of substantially all the towtruck company's assets;
- F. The value of the consideration received by the towtruck company was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- G. The towtruck company was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- H. The transfer occurred shortly before or shortly after substantial permit fees or civil penalties were incurred; and
- I. The towtruck company transferred the essential assets of the business to a lienor who transferred the assets to an insider of the towtruck company.
- J. It shall be a violation of this Ordinance for a towtruck company to fraudulently transfer a towtruck company.

Section 19. Deceptive and Unfair Trade Practices.

No person shall engage in any unfair method of competition, unconscionable acts or practices or unfair or deceptive acts or practices in the conduct of towing services. A towtruck company engages in an unfair method of competition or unfair or unconscionable acts or deceptive practices when in the course of his or her business, vocation or occupation, he or she knows or in the exercise of care should know, that he or she in the past engaged or is now engaging in any unfair method of competition or unconscionable acts or practices or unfair or deceptive acts or practices in the conduct of any towing services.

Section 20. Cease and Desist Order.

- A. If the Division, after due investigation, has reason to believe that a towtruck company has been or is violating any of the provisions of this Ordinance, then the Division may cause to be served by personal service, certified mail or posting in a conspicuous place at the towtruck company's place of business, a demand to cease and desist, stating the charges and shall incorporate and set out the following:
 - (1) The name of the complainant;
 - (2) The alleged charge and approximate date of the commission of the act;
 - (3) The section of the ordinance alleged to be involved.
- B. Any towtruck company which has been issued a cease and desist order by the Division may appeal such order to the Consumer Affairs Hearing Board/Hearing Officer within twenty (20) days of receipt of the order. A nonrefundable filing fee must accompany the written request for appeal. The filing fee shall be established by resolution of the Commission. The appeal shall be reviewed at a hearing of the Consumer Affairs Hearing Board/Hearing Officer within sixty (60) days of receipt by the Division of the request for appeal.
- C. The Board shall keep a full record of the hearing, which record shall be public and open to inspection by any person, and upon request, the Board shall

furnish such party a copy of the hearing record, at such cost as the Commission deems appropriate.

- D. Procedure at hearings: At the hearing, the towtruck company may be represented by counsel and may bring all original documents and other data pertinent to the case; and will be given an opportunity to present witnesses and evidence he or she may deem appropriate.
- E. The Consumer Affairs Hearing Board/Hearing Officer shall hear the cases on the agenda. All testimony shall be under oath or by affirmation and shall be recorded. Each case before the Consumer Affairs Hearing Board/Hearing Officer shall be presented by the Division. The Consumer Affairs Hearing Board/Hearing Officer shall take testimony from County staff, if relevant, the alleged violator, and other relevant testimony. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. Upon determination of the chairperson, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, including hearsay evidence, whether or not such evidence would be admissible in a trial in the courts of Florida. Due regard shall be given to the competent, reliable and technical evidence which will aid the Consumer Affairs Hearing Board/Hearing Officer in making a fair determination of the matter, regardless of the existence of any common law or statutory rule which might otherwise make improper the admission of such evidence.
- F. Any member of the Consumer Affairs Hearing Board/Hearing Officer or the attorney representing the Division may inquire of or question any witness before the Consumer Affairs Hearing Board/Hearing Officer. The alleged violator, or his/her attorney, shall be permitted to inquire of any witness before the Consumer Affairs Hearing Board/Hearing Officer. The right to cross examine witnesses shall be preserved.
- G. At the conclusion of the hearing, the Consumer Affairs Hearing Board/Hearing Officer shall orally render its decision (order) based on evidence entered into

the record. The decision shall be by motion approved by the affirmative vote of those members present and voting. The Consumer Affairs Hearing Board/Hearing Officer's decision shall be transmitted to the towtruck company in the form of a written order including finding of facts, and conclusion of law consistent with the record. The order shall be transmitted by certified mail/hand delivery/posting to the towtruck company within ten (10) days after the hearing. The order may include a notice that it must be complied with by a specified date.

- H. Any person may appeal a final determination of the Consumer Affairs Hearing Board/Hearing Officer within thirty (30) days of the rendition of the decision by filing a petition for writ of certiorari in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

Section 21. Assurance of Voluntary Compliance.

- A. In the enforcement of this Ordinance, the Division may accept an assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of law from any person who has engaged, or was about to engage in, such method, act, or practice. Any such assurance shall be a formal written agreement between the Division and the towtruck company, approved as to form and legal sufficiency by the County Attorney's Office, and filed with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit. Such assurances of voluntary compliance may be conditioned on a commitment to reimburse consumers or any other appropriate corrective action such as the payment by the towtruck company of the costs of the investigation by the Division. An assurance of voluntary compliance is not evidence of prior violation of this part, however, unless an assurance of voluntary compliance has been rescinded by agreement of the parties or voided by the Court for good cause, subsequent failure to comply with the terms of an assurance of voluntary compliance shall be deemed prima facie evidence of a violation of this Ordinance. No such assurance of voluntary compliance shall act as a limitation upon any action or

remedy available to a person aggrieved by a violation of this Ordinance.

- B. Every towtruck company desiring to negotiate an assurance of voluntary compliance shall be apprised of his or her right to have his or her case heard by the Consumer Affairs Hearing Board/Hearing Officer in the event he or she does not wish to enter into such assurance of voluntary compliance.

SECTION 22. Enforcement and Penalties: Civil and Criminal.

- A. It shall be unlawful for any person to violate any of the provisions of this Ordinance. This Ordinance shall be enforced by personnel authorized by the Division, county code enforcement officials, the police agencies of the various municipalities in Palm Beach County and by the Palm Beach County Sheriff's Office. When specifically authorized by the Director, this Ordinance may be enforced by other Palm Beach County personnel.
- B. Persons who provide services pursuant to this Ordinance shall not use physical force or violence or threats of physical force or violence in dealing with the individuals responsible for administering this Ordinance or individuals who have had or are about to have their vehicles/vessels recovered, towed or removed or stored in connection therewith.
- C. The County Court shall have jurisdiction over all violations of this Ordinance.
- D. The Division shall maintain a system by which violators are given citations or written notice of all violations. The County Clerk shall accept designated fines and issue receipts therefore.
- E. The Division is authorized to enforce the provisions of this Ordinance by administrative fines not to exceed five hundred dollars (\$500.00) for each violation. Any person who has violated any provision of this Ordinance shall be fined an amount as established by the Commission by Resolution. Each day of a continuing violation shall be deemed a separate violation.
- F. Payment shall be made, either by mail or in person, to the Violations Bureau within the time specified upon the citation. If a person follows these procedures, he shall be deemed to have admitted to the infraction and to have

waived his/her right to a hearing on the issue of the commission of the infraction.

- G. All fines collected as a result of said citations (except those fines collected as a result of citations issued by municipal law enforcement officers, which shall be remitted by the Clerk of the Court directly to the municipality issuing the citation) shall be paid into the County Treasury and deposited into the designated fund for the Division. All mandatory costs as required by statute shall be assessed against every person convicted of a violation of this Ordinance.
- H. Any person who fails to make payments within the time period specified on the citation shall be deemed to have waived his/her right to pay the civil penalty as set forth in the citation and shall appear before the County Court.
- I. Any person who elects to appear before the court to contest the citation shall be deemed to waive his/her right to pay the civil penalty. The court, after a hearing, shall make a finding as to whether a violation has occurred and may impose a civil penalty not to exceed \$500.00 plus court costs.
- J. If a person fails to pay the civil penalty or fails to appear in court to contest the citation, s/he shall be deemed to have waived his/her right to contest the citation and, in such case, a default judgment shall be entered and the judge shall impose a fine at that time an order to show cause may be issued. If the fine is paid, the case shall be dismissed. If the fine is not paid, judgment may be entered up to the maximum civil penalty of \$500.00 plus court costs.
- K. Any person who refuses to sign and accept a citation issued pursuant to this Ordinance shall be guilty of a misdemeanor of the second degree, punishable as provided by sections 775.082, 775.083 or 775.084, Florida Statutes.
- L. The Division may require mandatory court appearances for violations resulting in the issuance of a third or subsequent citation to a person. The citation shall clearly inform the person of the mandatory court appearance. The Division shall maintain records to prove the number of citations issued to the person. Persons required to appear in court do not have the option of paying the fine instead of appearing in court.

SECTION 23. Administrative Enforcement.

- A. The Director is authorized to deny, suspend or revoke operating permits, towtruck decals, upon written notice. Towtruck companies are subject to denial, suspension or revocation when it appears that:
1. The towtruck company and/or driver has failed to comply with or has violated the provisions of this Ordinance;
 2. The towtruck company has failed to comply with or has violated the provisions of Chapter 323 F.S., s. 713.78 and 715.07, F.S.;
 3. The operating permit was obtained by an application in which any material fact was omitted or falsely stated;
 4. Any towtruck or equipment owned or operated by the towtruck company and issued a decal pursuant to the Ordinance has been operating in violation of this Ordinance or any provision of law.
 5. In addition, a towing operating permit issued pursuant to this Ordinance may be suspended or revoked when the Director receives written notification that the towtruck company, towtruck operator's officer, director or partner pled nolo contendere, pled guilty or has been convicted of any crime designated as a felony (as referenced in Section 6.C.3.b. and c. of this Ordinance) ; any crime relating to motor vehicles; or any crime involving the sale or possession of controlled substances as defined by the Florida Rico Act, section 893.03, Florida Statutes, regardless of whether adjudication has been withheld. The only exception to this rule is where the civil rights of such individual has been restored.
 6. Two or more violations of this Ordinance which result in civil fines/penalties, judgments or administrative orders entered by the Division and/or a conviction or plea of guilty or nolo contendere may result in the revocation, suspension or denial of the towtruck operating permit.

7. Failed to comply with the terms of a cease and desist order, notice to correct a violation, written assurance of voluntary compliance, or any other lawful order of the Director, the Division, or the Consumer Affairs Hearing Board and/or Hearing Officer.
8. Failed to obtain or maintain insurance as required by this Ordinance.

Section 24. Additional Penalties.

Failure to comply with the requirements of this Ordinance shall also constitute a violation of this Ordinance, and the Consumer Affairs Ordinance of Palm Beach County (No. 77-10, as amended). Violations of this Ordinance may be punishable, upon conviction, pursuant to Section 125.69(1), Florida Statutes, by a fine not to exceed \$500.00 per violation or imprisonment not exceeding sixty (60) days, or both such fine or imprisonment, or may subject the violator to civil fines based on the issuance of a civil citation. Each day of continuing violation shall be considered a separate offense. In addition to the sanctions contained herein, the County shall take any other appropriate legal action, including but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this Ordinance. It is the purpose of this Ordinance to provide additional cumulative remedies.

SECTION 25. Hearings and Appeals.

Upon receipt of the notice of denial, revocation, or suspension of an operating permit, which notice shall specify the grounds for the denial, suspension or revocation, the towtruck company shall be entitled to an appeal according to the following:

- A. Administrative Appeal: Any towtruck company, which has had an operating permit, denied, revoked, or suspended by the Division, may appeal such decision to the Consumer Affairs Hearing Board/Hearing Officer within twenty (20) days of receipt of the decision. A non-refundable filing fee must accompany the written request for appeal. The company or attorney shall file a written notice of appeal signed by the company or attorney requesting a

hearing and setting forth a brief statement of the reasons thereof. The filing fee shall be established by resolution of the Commission. The appeal shall be reviewed at a hearing of the Consumer Affairs Hearing Board/Hearing Officer within sixty (60) days of receipt by the Division of the notice of appeal. The towtruck company may be represented by an attorney and shall be entitled to present a defense.

- B. Orders: At the conclusion of any hearing set forth in this section, the Consumer Affairs Hearing Board/Hearing Officer shall orally render its decision (order) based on evidence entered into the record. The decision shall be by motion approved by the affirmative vote of those members present and voting. The decision shall be stated in a written order and mailed to the towtruck company not later than ten (10) days after the hearing, and shall be deemed final agency action with regard to the matter appealed.
- C. Court Appeal: Any person may appeal a final determination of the Consumer Affairs Hearing Board/Hearing Officer within thirty (30) days of the rendition of the decision by filing a petition for writ of certiorari in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.
- D. For purposes of appeal, the FDLE Criminal History/Records Reports and the State of Florida Department of Highway Safety and Motor Vehicles traffic/driving record report shall be deemed prima facie evidence and admitted into evidence before the Consumer Affairs Hearing Board/Hearing Officer.
- D. Upon receipt of such notice of appeal, the Division shall set a time and place for such hearing and shall give the violator or attorney and the Consumer Affairs Hearing Board/Hearing Officer reasonable notice thereof. All hearings and appeals shall be scheduled and determined as promptly as practicable and in no event more than sixty (60) days from the date of the notice of the written notice of appeal was filed. Written notice of the time, date, and place of the hearing of the appeal by the Division shall be served upon the appellant no later than twenty (20) days prior to the date of the hearing. Said notice of hearing, shall be by personal service, certified mail or posting in a

conspicuous place at the towtruck company's place of business. Failure of the company to respond within the time frames specified herein or failure to appear at a duly noticed hearing shall be deemed a waiver of the right to hearing and an admission of the acts specified in the notice.

- E. The Consumer Affairs Hearing Board/Hearing Officer shall consider the case record as well as the statement offered by any interested party and shall consider the matter de novo and shall, upon the basis of the record before it, affirm, modify or reverse the decision of the Director.
- F. If the Consumer Affairs Hearing Board/Hearing Officer affirms the decision of the Director to deny, suspend or revoke a towing operating permit, the suspension or revocation shall be effective from the date of the Consumer Affairs Hearing Board's/Hearing Officer's order. A decision to affirm the action of the Director shall constitute final agency action for purposes of further appeal.
- G. Suspension of the Operating Permit: If, at the conclusion of the hearing, the Consumer Affairs Hearing Board/Hearing Officer decides to suspend the operating permit, a time certain shall be set as the period of suspension. Prior to the end of such time certain, those violations for which the suspension was imposed shall be corrected; otherwise, the suspended permit(s) will be automatically revoked. A fee of fifty percent (50%) of the operating permit fee shall be collected to reinstate the suspended permit(s).
- H. Revocation of Permit/I. D Badge: If, at the conclusion of the hearing, the Consumer Affairs Hearing Board /Hearing Officer decides to revoke an operating permit the individual, driver or towtruck company shall remove and/or return the operating permit to the Division. A towtruck company whose operating permit has been revoked shall not be eligible to reapply as a new applicant for a period of six (6) months from the date of revocation.
- I. If the Consumer Affairs Hearing Board/Hearing Officer reverses the decision of the Director, it shall direct the Director to issue or restore the towtruck operating permit.
- J. In the event a written notice of appeal and accompanying filing fees are not

submitted within the times frames outlined in this Ordinance, the decision of the Director shall prevail.

- K. Effect of Appeal: The appeal of the decision of the Director to suspend or revoke a towing operating permit shall stay the effective date of the suspension or revocation.

SECTION 26. Scope of Ordinance.

- A. The provisions of this Ordinance and the relevant Florida Statutes, shall be the exclusive regulations applicable to towing, recovery and removal of vehicles/vessels in Palm Beach County and all storage provided therewith. This Ordinance shall be applicable in both the unincorporated and incorporated areas, except that this Ordinance shall not apply in any municipality that has adopted and maintains in effect Ordinances or regulations governing the same matters.
- B. This Ordinance shall not apply to the towing of a vehicle/vessel which occurs with the consent of the vehicle/vessel's owner or operator.
- C. Nothing in this Ordinance shall be construed to prohibit the discharge or storage of a vehicle or vessel lawfully recovered, towed or removed in another county and lawfully transported into Palm Beach County.

SECTION 27. Repeal of Laws in Conflict.

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed as it relates to the enforcement of this Ordinance only.

SECTION 28. Savings Clause.

Notwithstanding Section 28, Repeal of Laws in Conflict, all administrative and court orders, fines and pending enforcement issued pursuant to the authority and procedures established by Ordinance 2002-007 shall remain in full force and effect.

SECTION 29. Inclusion in the Code of Laws & Ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the words "ordinance," "article," "section," "subsection," or "paragraph" may be changed to any other appropriate word to accomplish codification.

SECTION 30. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.


SECTION 31. Effective Date.

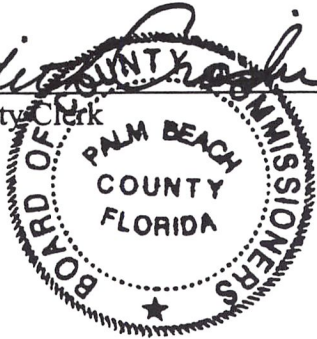
The provisions of this Ordinance shall be effective immediately upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,
Florida, on the 17th day of May, 2005.

Sharon R. Bock
Clerk & Comptroller

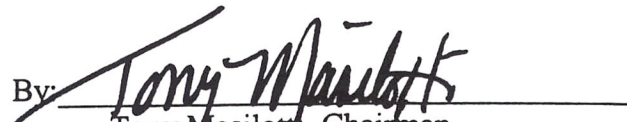
By:


Deputy Clerk



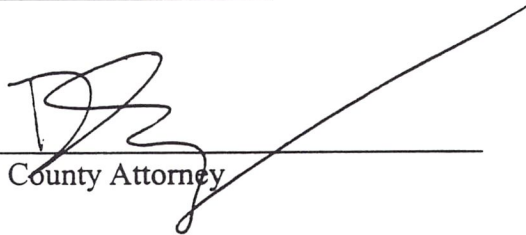
PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By:


Tony Masiotta, Chairman

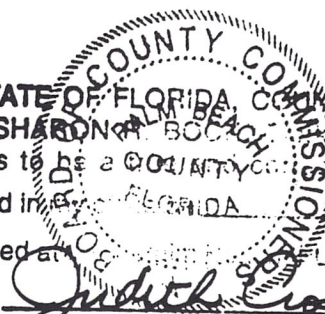

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:


County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 25th day of May,
2005.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk & Comptroller certify
this to be a copy of the original
filed in FLORIDA MAY 17 2005
dated at 6-10-2005
By: 
Deputy Clerk